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JAMES C. WRAY
1493 CHAIN BRIDGE ROAD, SUITE 300
MCLEAN, VA 22101

In re Application of LANDAZURI	:	
U.S. Application No.: 10/585,198	:	
PCT Application No.: PCT/EP2003/014985	:	DECISION
Int. Filing Date: 30 December 2003	:	
Priority Date Claimed: none	:	
Attorney Docket No.: KOB	:	
For: CREAM FILLER COMPOSITION AND	:	
METHOD FOR PREPARING	:	

This is in response to applicant's "Petition for Filing Without Inventor's Signature Under 37 CFR 1.47(b)" filed 17 October 2007.

BACKGROUND

On 30 December 2003, applicant filed international application PCT/EP2003/014985. A copy of the international application was communicated to the USPTO from the International Bureau on 14 July 2005. The thirty-month period for paying the basic national fee in the United States expired on 30 June 2006.

On 30 June 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 16 February 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 10 April 2007, applicant filed a response.

On 17 September 2007, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916).

On 17 October 2007, applicant filed the present petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(i), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. See 37 CFR 1.47(b).

With regard to item (1) above, the requisite petition fee will be charged to Deposit Account No. 02-3704.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition states that inventor Thomas Landazuri refuses to sign the application papers. Although it appears that a bona fide attempt may have been made to present a copy of the application papers to the inventor for signature (see electronic mail message dated 26 September 2006) and that the inventor may be refusing to sign (see electronic mail message dated 03 October 2006), petitioner has not furnished an affidavit from the person who actually sent such papers to the inventor and to whom the purported refusal was actually made, i.e. Carol Vandeputte. Thus, it would not be reasonable to conclude at the present time that the inventor refuses to join in the application.

With regard to item (3) above, the petition states the last known address of the nonsigning inventor.

With regard to item (4) above, an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has not been provided.

With regard to item (5) above, the 37 CFR 1.47(b) applicant must prove that, as of the date the application was deposited in the Patent and Trademark Office, (A) the invention has been assigned to the applicant, or (B) the inventor has agreed in writing to assign the invention to the applicant, or (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify filing of the application. MPEP 409.03(f).

In the present case, item (B) applies. Petitioner has furnished a copy of an employment agreement signed by the inventor. Such employment agreement specifies that inventions made by the employee during and as a result of his employment become property of the employer (See "Article 10" of Annex 3). However, petitioner has not provided an affidavit from the person with firsthand knowledge of the present invention being made by the inventor during and as a result of his employment with the employer Amylum Belgium NV ("Amylum"). Petitioner has sufficiently established that Amylum changed its company name to Tate & Lyle Europe NV ("Tate & Lyle"), the purported assignee (see Annex 4).

With regard to item (6) above, the petition includes an adequate statement with regard to the preservation of rights of the parties.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(b) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file a proper response will result in abandonment of the application. Extensions of time under 37 CFR 1.136 are available. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Lin
Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459